

(29,327)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 186

SAMUEL D. WHITE, AS TRUSTEE OF THE ESTATE OF  
PETE STUMP, BANKRUPT, PETITIONER,

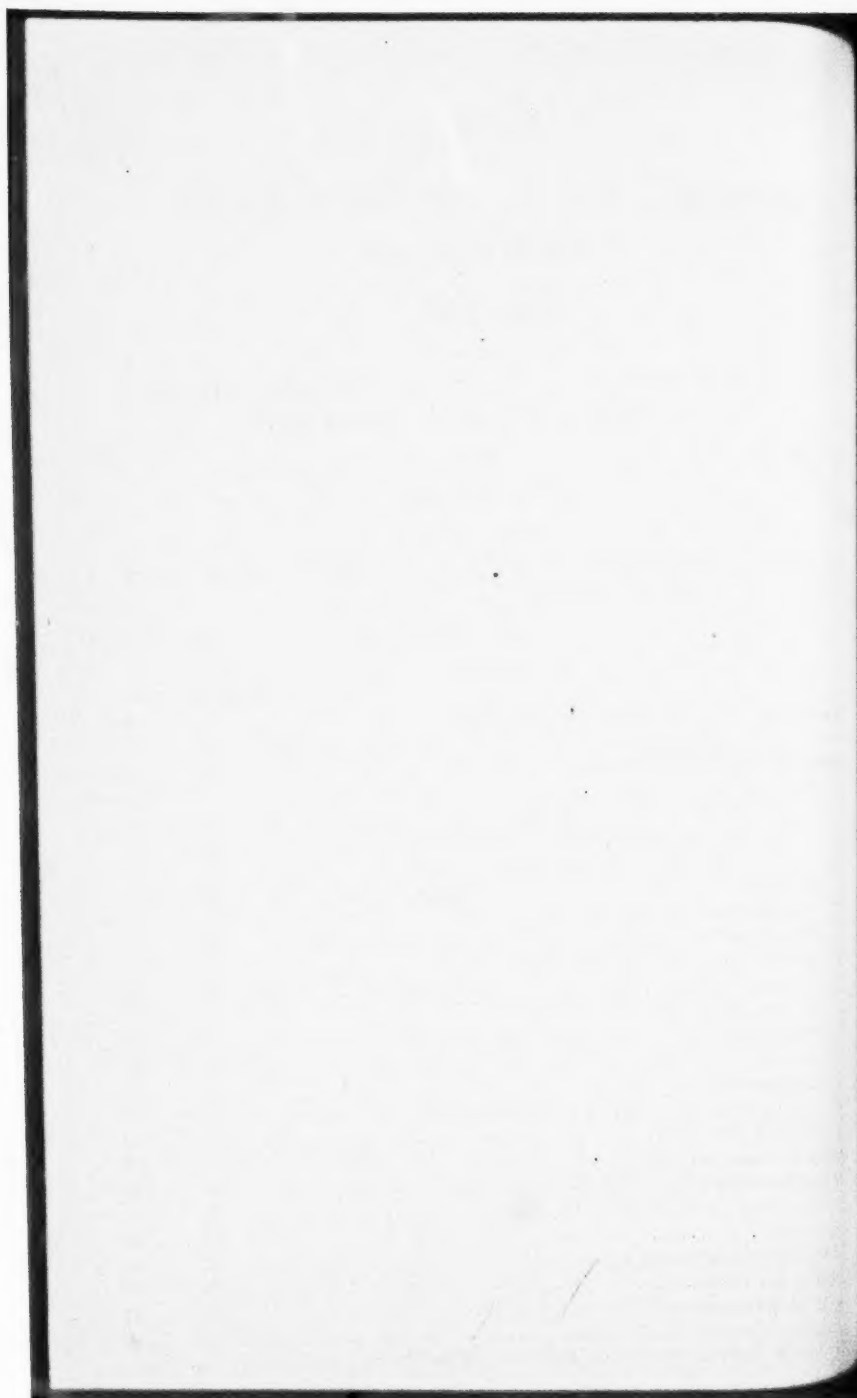
*vs.*

VETA STUMP

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT

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[fol. 1] **IN THE CIRCUIT COURT OF APPEALS OF THE  
UNITED STATES FOR THE NINTH CIRCUIT**

In the Matter of the Estate of PETE STUMP, Bankrupt

PETITION FOR REVISION OF PROCEEDINGS OF THE DISTRICT COURT  
OF THE UNITED STATES FOR THE DISTRICT OF IDAHO, IN BANK-  
RUPTCY—Filed July 29, 1922

To the Honorable Erskine M. Ross, Circuit Judge of the Circuit  
Court of the United States for the Ninth Circuit, and to the other  
Justices of said honorable court and to the said honorable court:

The petition of Samuel D. White, trustee of the estate of Pete  
Stump, bankrupt, respectfully shows:

I

That Pete Stump and Veta Stump were at all times in this peti-  
tion mentioned, and are now, husband and wife.

II

That your petitioner is the duly appointed, qualified and acting  
trustee of the above-entitled estate.

III

That on or about the 2d day of February, 1922, Pete Stump, a  
citizen and resident of the county of Nez Perce and State of Idaho,  
filed before the District Court of the United States for the District  
of Idaho his petition in bankruptcy in due form and provided by  
law.

[fol. 2]

IV

That among the assets described in said petition was and is the  
following described real property, situated in Nez Perce County,  
State of Idaho:

Northeast Quarter (N. E.  $\frac{1}{4}$ ) of Northeast Quarter (N. E.  $\frac{1}{4}$ ),  
and Northwest Quarter (N. W.  $\frac{1}{4}$ ) of Northeast Quarter (N. E.  $\frac{1}{4}$ );  
Southwest Quarter (S. W.  $\frac{1}{4}$ ) of Northeast Quarter (N. E.  $\frac{1}{4}$ ) and  
Southeast Quarter (S. E.  $\frac{1}{4}$ ) of Northeast Quarter (N. E.  $\frac{1}{4}$ ),  
Section Thirty-one (31) Township Thirty-eight (38) North of  
Range One (1) west of the Boise Meridian.

V

That in his said petition the said Pete Stump made no claim for  
a homestead exemption upon the said property, and at the said time

neither he nor his wife had filed a legal declaration of homestead upon said property in accordance with the laws of the state of Idaho.

## VI

That after the filing of the said petition the said Pete Stump was on February 6th, 1922, duly adjudged a bankrupt, and at the first meeting of creditors held on the 8th day of April, 1922, your petitioner was appointed as such trustee.

## VII

That on the 28th day of March, 1922, Veta Stump filed a declaration of homestead in the office of the county recorder of Nez Perce [fol. 3] County, State of Idaho, and thereafter, on, to wit, the 20th day of April, 1922, filed in the lower court, before the Honorable Charles H. Chance, referee in Bankruptcy, her verified petition, asking that the said above-described land be set apart as a homestead under the laws of the state of Idaho. Thereafter the trustee filed an answer to the said petition and refused to set aside the said homestead. Upon the hearing the referee held that the filing of the declaration of homestead was too late, that the rights of creditors attached as of the date of the filing of the petition, and that the said homestead was subject to the rights of creditors.

## VIII

Thereafter a petition for review of the order of the said referee was taken to the said District Court, and upon the hearing of the said matter the said District Court, on, to wit, the 29th day of June, 1922, reversed the order of the referee and directed him to allow the said homestead as prayed for in the said petition.

That the said matter in issue has never been finally adjudicated in so far as the homestead exemption laws of the state of Idaho are concerned. That under the laws of the state of Idaho relating to homestead exemptions and the claiming thereof by debtors and under judicial constructions of said statutes by the Supreme Court of the State of Idaho the right of this petitioner, as trustee for the creditors of the bankrupt as he verily believes, is paramount the [fol. 4] claim of Veta Stump for a homestead exemption in and to said real property.

That the specific questions of law which your petitioner desires to have reviewed and revised concerns the following:

(1.) Section 5441 of the Compiled Statutes of the State of Idaho provides in part as follows:

"To what judgments subject. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitutes liens upon the premises; or in an action in which

an attachment was levied upon the premises before the filing of such declaration." \* \* \*

(2.) The filing of a voluntary petition in bankruptcy is in effect an attachment and a caveat in favor of creditors. By the filing of the petition a creditor is precluded from attaching in the state courts.

(3.) The Supreme Court of Idaho, in the case of Smith vs. Richards, 2 Idaho, 498, has decided that a valid legal lien cannot be divested by a subsequent declaration of homestead by the debtor or his wife.

(4.) The bankruptcy law and amendments thereto—Sec. 47-A and 70 as adjudicated by the Supreme Court of the United States give to the trustee a lien as of the date of the filing of the petition.

## X

That your petitioner believes that the District Courts committed [fol. 5] error in making and rendering its said decision and desires to have the said matter reviewed by the Circuit Court of Appeals of the Ninth Circuit. That in the opinion of our petitioner it is necessary that there be a final adjudication of the said matter in order that a uniform construction of the bankruptcy — may be had in regard to the allowance of the homestead exemption.

Wherefore, this petitioner feeling himself aggrieved prays that the decision and judgment of the Honorable F. S. Dietrich be reviewed and revised in matter of law by the Honorable United States Circuit Court of Appeals for the Ninth Circuit, as provided in paragraph 24B of the Bankruptcy Act of 1898 and the rules and practice in such case provided.

S. D. White, Petitioner. Tannahill & Leeper, By Robert D. Leeper, Attorneys for Petitioner, Samuel D. White, Trustee. Residence and P. O. Address, Lewiston, Idaho.

STATE OF IDAHO,  
County of Nez Perce, ss:

I, Samuel D. White, the petitioner mentioned in the foregoing petition, do hereby make solemn oath that I am the duly appointed qualified and acting trustee of the estate of Pete Stump, Bankrupt; that the statement of facts contained in said petition are true. acc- [fol. 6] cording to the best of my knowledge, information and belief.

S. D. White.

Subscribed and sworn to before me this 10th day of July, 1922. G. O. Tannahill, Notary Public in and for said State, Residing at Lewiston, Therein. [Seal.]

Service of the within petition for review and revision admitted this 18th day of July by receipt and retention of a true copy thereof.

Harve H. Phipps, Attorney for Pete Stump, Bankrupt.

[File endorsement omitted.]

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL  
DIVISION, DISTRICT OF IDAHO

PETITION OF PETE STUMP—Filed Feb. 2, 1922

No. 1539

Debtor's Petition

To the Honorable F. S. Dietrich, Judge of the District Court of the United States for the Central Div., District of Idaho:

The petition of Pete Stump, of Southwick, in the County of Nez [fol. 7] Perce, and District and State of Idaho, a (State occupation) farmer, respectfully represents that he has resided (or has resided, or has had his domicile) for the greater portion of six months next immediately preceding the filing on this petition at Southwick, Nez Perce County, Idaho, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A (1, 2, 3, 4, 5), and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by your petitioner's oath, contains an accurate inventory of all his property both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioner prays that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

Pete Stump, Petitioner. Clay McNamee and James L. Harn,  
Attorneys for Petitioner. Residence, Lewiston, Idaho.

[fol. 8] UNITED STATES OF AMERICA,  
Central Div., District of Idaho,  
County of —, ss:

I, Pete Stump, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Pete Stump, Petitioner.

Subscribed and sworn to before me, this 30th day of January, A. D. 1922. James L. Harn, Notary Public, (Official character:) [N. P. Seal.]

All the Schedules must be filed with this Petition.

Oath to Petition and Schedule may be made before Referees, and before officers authorized to administer oaths in proceedings before the Courts of the United States, or under the laws of the State where the same are to be taken, and diplomatic or consular officers of the United States in any foreign country. Attorney for Petitioner cannot act as Notary.

## SCHEDULE A

## Statement of all Debts of Bankrupt

## Statement of all Creditors Who are to be Paid in Full or to Whom Priority is Secured by Law

Claims which have priority	Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated); give street and number	Where and when contracted	Nature and consideration of debt, and whether contracted as partner or joint contractor, and if so, with whom	Amount
<sup>1</sup> Taxes and debts due and owing to the United States.	.....	.....	.....	.....	.....	\$ cts. None.
<sup>2</sup> Taxes due and owing to the State of Idaho, or to any county, district or municipality thereof.	.....	.....	.....	.....	$\frac{1}{2}$ taxes, 1921, due State of Idaho... Taxes, 1921, due on Clarkston Property, about	\$67 01 20 00 .....
<sup>3</sup> Taxes due State of Washington.	.....	.....	.....	.....	.....	None.
Wages due workmen, clerks, servants or traveling salesmen, to as amount not exceeding \$300 each, earned within three months before filing the petition.	.....	.....	.....	.....	.....	None.
<sup>4</sup> Other debts having priority by law.	.....	.....	.....	.....	.....	None.
Total .....	.....	.....	.....	.....	.....	\$86 01

Pete Stump, Petitioner.

This schedule must be executed in triplicate.



## Creditors Holding Securities

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

This schedule includes liens, pledges, mortgages, notes, etc.

Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated)	Description of securities	When and where debts were contracted	Value of securities	Amount of debt
					\$15,000	.....
	Vermont Loan and Trust Co., Spokane, Wash., about					
	Real Estate mtg. given about Nov., 1920, due in 5 years, bearing Int. at 6% for principal sum of					
	\$5,500. Mtg. covers N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$				5,500.00	
	Sec. 31 Twp. 38 N. R. L. W. B. M. ....				.....	200.00
	Two Hundred Dollars, commission, notes due on above loan. ....				.....	
	W. H. Stump, Clarkston, Wash., given about Oct., 1920, real estate mtg. for \$500. Int. 7% due				1,500	520.00
	Oct., 1922. Mtg. covers $1\frac{1}{2}$ acres on Libby and 15th St., Clarkston, Washington, about. ....					
	Total .....				\$16,500	\$6,220.00
						Pete Stump, Petitioner.

NOTE.—Give street and number address where possible.

[fol. 11]

## Schedule A-3

## Creditors Whose Claims are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher	Names of creditors	Residences (if unknown, that fact must be stated)	When and where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other per- son, and if so, with whom	Amount
	Ziemann Bros., Southwick, Idaho, open account for merchandise between 1921 and present date about.....				\$163.00
	Joe Michels, Orofino, Ida., promissory note borrowed about Oct., 1921, Int. 10%.....				300.00
	Dewiters and Gonzward, Leland, Idaho, store account between 1921 and 1922, about.....				152.00
	Vollmer Clearwater Co., Kendrick, Idaho, promissory note, given about Feb., 1921, Int. 10%.....				3,480.00
	B. F. Wardell, Spokane, Wash., promissory notes, for Life Ins. Policy given Oct. 16th, 1920, Int. 8%.....				160.00

[fol. 12]

Kendrick State Bank, Kendrick, Ida., two promissory notes given about 1920 and Oct., 1921, Int. 10%.....	\$75.00
Kendrick Store Co., Kendrick, Idaho, open account, store bill between Nov., 1921, and present date, about.....	39.00
Farmers Bank, Kendrick, Idaho, note given for purchase price of binder, about Oct., 1921, three other signers besides petitioner. Total amount of note about \$130, petitioner's liability $\frac{1}{4}$ thereof.....	32.50
Farmers Bank, Kendrick, promissory note given about Oct., 1921, Int. 10% about.....	100.00
<b>Total .....</b>	<b>\$4,474.00</b>

Pete Stump, Petitioner.

NOTE—Give street and number address where possible.

[fol. 13]

Schedule A-4

Liabilities on Notes or Bills Discounted Which Ought to be paid by the Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher	Names of holders as far as known	Residences (if unknown, that fact must be stated)	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom	Amount
	B. F. Wardell, Spokane, Wash., two promissory notes, Life Assurance Policy, given about Oct., 1920, signed by petitioner and his wife, Veta Stump.....				\$160.00
	Farmers Bank, Kendrick, promissory note, signed by Petitioner- Homer Hayward, Gordon Harris and John Deteneyer, about Oct., 1921, purchase price of binder about \$130.....				130.00
	Total .....				<u>\$290.00</u>
				Pete Stump, Petitioner.	

NOTE.—Give street and number address where possible.

[fol. 14]

## Schedule A-5

## Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher	Names of holders	Residences (if unknown, that fact must be stated)	Names and resi- dences of per- sons accom-dated	Places where contracted	Whether liability was contracted as partner or joint contractor, or with any other per- son; and if so, with whom	Amount \$ cts.
Same as Schedule A-4.						
Total						\$290.00

Pete Stump, Petitioner

[fol. 15]

## Oath to Schedule A

UNITED STATES OF AMERICA,  
Cent. Div., District of Idaho,  
County of —, ss:

On this 30th day of January, A. D. 1922, before me personally came Pete Stump, the person mentioned in and who subscribed to the foregoing Schedule (marked A 1, 2, 3, 4, 5), and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Subscribed and sworn to before me this 30th day of January, 1922. James L. Harn, Notary Public. [N. P. Seal.]

Petitioner's Attorney cannot act as Notary, etc.

To be attached to Schedule A after execution before proper officer.

This oath can be taken before a U. S. Judge, Referee, U. S. Commissioner or Notary Public.

[fol 16]

## Schedule B-1

## SCHEDULE B

## Statement of All Property of Bankrupt

## Real Estate

Location and description of all real estate owned by debtor, or held by him	Incumbrance thereon, if any, and date thereof	Statement of particulars relating thereto	Estimated value
NE. 1/4 NE. 1/4 and SW. 1/4 NE. 1/4 and SW. 1/4 NE. 1/4 and SE. 1/4 NE. 1/4, Sec. 31, Twp. 38, N. R. 1 W. B. M.			
Vermont Loan & Trust Co. hold mtg. thereon \$5,500.00			\$15,000.00
One and one-half acres of land situate on Libby and 15th St., Clarkston, Wash., outstanding Mtg. thereon held by W. H. Stump.			1,500.00
Total			<u>\$16,500.00</u>

Pete Stump, Petitioner.

This schedule must be executed in triplicate.

## Personal Property

A—Cash on hand.....	None.	
B—Bills of exchange, promisory notes, or securities of any description (each to be set out separately).....	None.	
C—Stock in trade in business of — at — of the value of.....	—.	
D—Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.	Beds, bedding, furniture, stoves, cooking utensils, dishes and provisions for family use of..... Feed, grain for livestock for 6 months including 5½ tons of hay.....	\$300.00 80.00
E—Books, prints and pictures, etc.....		20.00
F—Horses, cows, sheep and other animals (with number of each), viz.	Four work-horses, value about..... Two cows and one heifer, one sucking calf..... Four sows and ten shoats about four months old, about.	300.00 120.00 110.00
		<hr/> \$930.00
G—Carriages and other vehicles, viz.	One old wagon, value about..... One old hack, value about.....	\$35.00 30.00

## Schedule B-2—Continued

H—Farming stock and implements of husbandry, viz. ....	Few small tools, value about.....	10.00
I—Shipping and shares in vessels, viz. ....	None.	
K—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.	One Oliver gang plow 14 inch, value..... One 3 section Harrow, value..... Feed, grain and 5½ tons of hay, value.....	20.00 30.00 80
L—Patents, copyrights and trade marks, viz. . .	None.	
M—Goods or personal property of any other description, with the place where each is situated, viz.	85 acres of growing grain (wheat) estimated value..	415.00
Total .....		<u>\$620.00</u>

Pete Stump, Petitioner.

NOTE.—If any space is insufficient, annex additional sheets.



Schedule B-3

Choses in Action

A—Debts due petitioner on open account. . . . None.

B—Stock in incorporated companies, interest in joint stock companies and negotiable bonds.

C—Policies of insurance. . . . \$2,500 Life Ins. Policy in Idaho State Ins. Co., Boise, Idaho, have borrowed thereon from said Co., \$204.00. Policy has run about 5 years. \$2,000 Policy in Equitable Life Ins. Co. of New York. No cash surrender value. Policy issued about 3 months prior to this date.

D—Unliquidated claims of every nature with their estimated value. . . . None.

E—Deposits of money in banking institutions and elsewhere. . . . None.

Total . . . . . Pete Stump, Petitioner.

[fol. 20]

## Schedule B-4

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as it is known to the debtor.]

General Interest	Particular description	Supposed value of my interest \$ cts.
Interest in land.....	.....	.....
Personal property.....	None.	.....
Property in money, stocks, shares, bonds, annuities, etc.....	None.	.....
Rights and powers, legacies and bequests.....	None.	.....
Total .....	.....	.....

[fol. 21]

Property heretofore conveyed for benefit of creditors.....

What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, names and addresses of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor..... None.

Amount  
realized  
from proceeds  
of prop-  
erty conveyed  
\$ cts

What sum or sums have been paid to counsel, Have paid Clay McNamee and James L. Harn, attor-  
and to whom, for service rendered or to be neys at Lewiston, Idaho, one hundred dollars, pay-  
rendered in this bankruptcy? ment in full for services as my attorneys herein . . . . .

Total . . . . .

Pete Stump, Petitioner.

[fol. 22]

## Schedule B-5

A Particular Statement of the Property Claimed as Exempted from the Acts of Congress Relating to Bankruptcy, Giving Each Item of Property and Its Valuation and, if Any Portion of it is Real Estate, Its Location, Description and Present Use.

Military uniforms, arms and equipments..... None.

Property claimed to be exempted by State laws; Beds, bedding, furniture, cooking utensils, dishes, etc., its valuation; whether real or personal; its family provisions, pictures, etc..... \$310.00  
 description and present use, and reference Four horses, 1 set and half of harness, feed grain for given to the statute of the State creating the said horses for 6 months, including 5½ tons of hay .. 430.00  
 exemption. 2 cows and 1 sucking calf..... 80.00  
 1 old wagon..... 35.00  
 Small tools..... 10.00  
 1 Oliver Gang Plow..... 20.00  
 50 acres fall sown wheat on premises hereinbefore described owned by petitioner..... 250.00  
 Section 6920 Compiled Laws of Idaho and subdivisions thereof.

Valuation

Total ..... \$865.00

Pete Stump, Petitioner.

[fol. 23]

## Schedule B-6

## Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books ..... None.

Deeds ..... Deed to Nez Perce Co. farm land, deed to Clarkston  
acreage.

Papers, etc. .... None.

Pete Stump, Petitioner.

[fol. 24]

## Oath to Schedule B

UNITED STATES OF AMERICA,  
Cent. Div., District of Idaho,  
County of —, ss:

On this 30th day of Jan., A. D. 1922, before me personally came Pete Stump, the person mentioned in and who subscribed to the foregoing Schedule (marked B 1, 2, 3, 4, 5, 6), and who, being by me first duly sworn did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

James L. Harn, Notary Public. [N. P. Seal.]

Petitioner's Attorney cannot act as Notary, etc.

To be attached to Schedule B after execution before proper officer.

This oath can be taken before a U. S. Judge, Referee, U. S. Commissioner or Notary Public.

## SUMMARY OF DEBTS AND ASSETS

[From the Statement of the Bankrupt in Schedules A and B]

Schedule A—1 (1), Taxes and Debts due United States.	None.
Schedule A—1 (2), Taxes due States, Counties, Districts and Municipalities.....	87.01
Schedule A—1 (3), Wages.....	None.
Schedule A—1 (4), Other debts preferred by law.....	None.
[fol. 25] Schedule A—2, Secured Claims.....	6,220.00
Schedule A—3, Unsecured Claims.....	4,474.00
Schedule A—4, Notes and Bills which ought to be paid by other parties thereto.....	290.00
Schedule A—5, Accommodation Paper—See Schedule A—4.	
Schedule A, Total.....	\$11,071.01
Schedule B—1, Real Estate.....	\$16,500.00
Schedule B—2-a, Cash on hand.....	None.
Schedule B—2-b, Bills, Promissory Notes and Securities	None.
Schedule B—2-c, Stock in Trade.....	None.
Schedule B—2-d, Household Goods, etc.....	300.00
Schedule B—2-e, Books, Prints and Pictures.....	10.00
Schedule B—2-f, Horses, Cows and other Animals....	550.00
Schedule B—2-g, Carriages and other Vehicles.....	35.00
Schedule B—2-h, Farming Stock and Implements and Feed.....	140.00
Schedule B—2-i, Shipping and Shares in Vessels.....	None.
Schedule B—2-k, Machinery, Tools, etc.—See 2 h.	
Schedule B—2-l, Patents, Copyrights and Trade-Marks	None.

Schedule B—2-m, Other Personal Property—Growing Crop .....	250.00
Schedule B—3-a, Debts due on Open Accounts.....	None.
[fol. 26] Schedule B—3-b, Stocks, Negotiable Bonds, etc.	None.
Schedule B—3-c, Policies of Insurance—See Schedule B-3.	
Schedule B—3-d, Unliquidated Claims .....	None.
Schedule B—3-e, Deposits of Money in banks and elsewhere .....	None.
Schedule B—4, Property in Reversion, Remainder, Trust, etc. ....	None.
Schedule B—5, Property claimed to be exempted—(\$1,210.00).	
Schedule B—6, Books, Deeds and Papers.....	None.
Schedule B, Total .....	_____
N. B.—Insert all totals, where indicated.	_____, Petitioner.
[File endorsement omitted.]	

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT  
OF IDAHO, CENTRAL DIVISION

In Bankruptcy

No. 1539

[Title omitted]

CERTIFICATE OF REFEREE—Filed Apr. 8, 1922

I, Charles H. Chance, one of the Referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to said proceedings:

[fol. 27] The voluntary petition of Pete Stump to be declared a bankrupt was filed with the Clerk of the above-named court, February 2d, 1922, and an order made on said date by said Clerk referring the matter to said Referee.

The above-named Pete Stump was by said Referee on February 6th, 1922, duly adjudged a bankrupt.

The first meeting of creditors of said bankrupt was set for February 17, 1922, but by reason of the illness of the bankrupt on said date and illness of the Referee thereafter, the first meeting of creditors was not held until April 8th, 1922.

In his petition and schedules, the bankrupt listed as part of his assets the Northeast Quarter of Section 21, Township 38 North, Range 1 West of the Boise Meridian in Nez Perce County, State of Idaho, and fixed the estimated value thereof, at \$15,000.00, and further showed in said petition and schedules that said property

was subject to a mortgage for the sum of \$5,500.00 in favor of Vermont Loan & Trust Company; that in schedule B (5) of said petition and schedules, the bankrupt claimed as exempt certain personal property but made no claim on exemption of any part of said real property above described as a homestead.

That on March 1st, 1922, Veta Stump, the wife of said bankrupt, made and acknowledged a declaration of homestead on the real property above described, claiming said property as a homestead for herself, her husband and the three minor children of the bankrupt and herself; that in said claim of homestead, the estimated value [fol. 28] of said homestead was \$5,000.00; that said declaration of homestead was filed with the County Recorder of Nez Perce County, State of Idaho, on March 28th, 1922, and recorded in Book 2, page 339, Records of Homesteads of said county.

That at said meeting of creditors of April 28th, 1922, before the Referee, the bankrupt and his attorney, J. L. Harn being present, the following proceedings, among others, were had, to wit:

"Thereupon the bankrupt, by his attorney, submitted to the Referee a written claim of homestead, dated March 1st, 1922, recorded March 28th, 1922, in Book 2, page 339, Records of Homesteads, Nez Perce County, Idaho, for the following described land: Northeast Quarter of Section 31 Township 38 North, Range 1 East of the Boise Meridian,—said claim being made by Veta Stump, wife of the bankrupt, on behalf of herself, her husband, Pete Stump, and three minor children; the estimated value of said land being set forth in said claim as \$5,000.00.

Thereupon the attorney for the said Farmers State Bank objected to the reception or allowing of the claim of homestead at this time on the ground that the petition in bankruptcy was a voluntary petition; was made and sworn to by the bankrupt on January 30th, 1922, was filed in the United States District Court for the District of Idaho, on February 2d, 1922, and the bankrupt was adjudged a bankrupt, February 6th, 1922, and no claim was made in the petition by the said Pete Stump for any exemption on account of any [fol. 29] homestead claim on the land above described.

Thereupon the referee announced that he would withhold a decision as to allowing an amendment to the petition in bankruptcy to allowing said claim of exemption for the period of ten days and instructed the attorney for the bankrupt and the attorney for said Farmers State Bank to submit briefs or otherwise advise the referee as to whether or not said claim should be allowed."

On April 20th, 1922, formal claim of exemption of the property claimed as a homestead by the said Veta Stump, was filed with the Referee together with a brief of the attorneys for the said Veta Stump.

On April 28th, 1922, the answer of the trustee in bankruptcy to said petition of the said Veta Stump was filed with the Referee together with brief of the trustee's attorneys.

That on April 28th, 1922, the Referee made an order disallowing



said claim of exemption of homestead as petitioned for but allowing said claim subject to the title of the trustee and the claim of general creditors as a priority over the claim of the said Veta Stump.

That on May 6th, a petition was filed by the attorneys of the bankrupt asking for ten days additional time to prepare, serve and file the necessary papers on an appeal from the order of the Referee of April 28th, 1922.

That on May 6th, 1922, the Referee made an order allowing the bankrupt ten days additional time in which to file petition for re-[fol. 30] view of the order of the Referee of April 28th.

That on May 16th, 1922, the said Veta Stump, by her attorneys, filed with the Referee a petition for review of the order of April 28th, 1922, of the Referee.

The question to be reviewed is as follows:

Should the Referee have allowed the claim of the said Veta Stump for homestead in the amount of \$5,000.00 as a claim superior in right to the title of the trustee or to the claims of the general creditors against the real property on which claim of homestead was filed by the said Veta Stump, March 28th, 1922.

And the said question is hereby certified to the Judge for his opinion thereon.

Attached hereto are the following instruments and copies:

1. Copy of declaration of homestead.
2. Petition of Veta Stump for allowance of claim of homestead as filed with the Referee, April 20th.
3. Answer of trustee to petition of Veta Stump as filed with the Referee, April 28th.
4. Copy of order of Referee of April 28th, 1922.
5. Petition for extension of time.
6. Order allowing extension of time.
7. Petition of Veta Stump for review as filed with the Referee, May 16th, 1922.

Dated at Lewiston, in the County of Nez Perce, in the District aforesaid, this 16th day of May, 1922.

Charles H. Chance, Referee in Bankruptcy.

[fol. 31]

#### DECLARATION OF HOMESTEAD

Know all men by these presents, that I do hereby certify that I am married and that I do now reside, at the time of making this declaration, with my family on the land and premises hereinafter described.

That my family consists of myself, my husband, Peter Stump, and three minor children; that my said husband has made no homestead

declaration and declarant is making this declaration for the joint benefit of herself, her said husband and three minor children.

That the land and premises, on which my family and I reside, are bounded and described as follows, to wit: lying and being in the County of Nez Perce, State of Idaho:

"The Northeast quarter of the Northeast quarter (N. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) the Northwest quarter of the Northeast quarter (N. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) the Southwest quarter of the Northeast quarter (S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) and the Southeast quarter of the Northeast quarter, (S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One, W. B. M."

That it is my intention to use and claim the said lot of land and premises, above described, together with the dwelling-house thereon and its appurtenances, as a homestead and I do hereby select and claim the same as a homestead for the joint benefit of myself, my said husband and said three minor children.

[fol. 32] That the actual cash value of said property, I estimate, to be Five Thousand Dollars (\$5,000.00) in which said amount I claim and value said homestead.

(Signed) Veta Stump. (Seal.) Signed, sealed and delivered in the presence of: G. H. Zieman.

STATE OF IDAHO,

County of Nez Perce, ss:

On this 1st day of March, 1922, before me G. H. Zieman, a Notary Public, in and for said county and State, personally appeared Veta Stump, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same for the uses and purposes therein enumerated.

In witness whereof, I have hereunto set my hand and affixed my Notarially Seal, the day and year, in this certificate first above written.

G. H. Zieman, Notary Public in and for the State of Idaho,  
Residing at the Town of Southwick, Nez Perce County,  
Idaho. [Seal.]

Filed and recorded March 28th, 1922. Book 2, Hstd., page 339.

[File endorsement omitted.]

[fol. 33] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy.

No. 1539

Before Charles H. Chance, Referee in Bankruptcy  
[Title omitted]

PETITION OF VETA STUMP FOR SETTING APART OF HOMESTEAD—

Filed Apr. 20, 1922

Comes now Veta Stump, by her attorneys, Clay McNamee and James L. Harn, and respectfully shows to the Court the following facts, to wit:

# I

That Veta Stump now is and at all times hereinafter has been the wife of Peter Stump, who is the same and identical person as Pete Stump.

# II

That prior to the first day of March, A. D. 1922, Veta Stump and Peter Stump, as husband and wife, were the owners in fee simple absolute of the following described parcels of land situate, lying and being in the County of Nez Perce, State of Idaho, and particularly described as follows, to wit:

"The Northeast quarter of the Northeast quarter (N. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ), the Northwest quarter of the Northeast quarter, (N. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) the Southwest quarter of the Northeast quarter, (S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) and the Southeast quarter of the Northeast quarter, (S. E. [fol. 34]  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ), all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One, (1), West Boise Meridian."

# III

That on or about the first day of March, A. D. 1922, Veta Stump, under the provisions of Section- 5438 and 5462 of the Idaho Compiled Statutes of 1919 filed a Declaration of Homestead to the extent of five thousand dollars on the premises herein described and that thereafter on the 28th day of March, A. D. 1922, filed and recorded the same in Book two of Homesteads, at page 339 on the records of Nez Perce County, State of Idaho.

# IV

That on or about the 6th day of February, A. D. 1922, Peter Stump, on a voluntary petition in the above-entitled court, was adjudged a bankrupt.

Wherefore, your petitioner prays that the property claimed in the Declaration of Homestead, herein mentioned, be segregated from the assets of the bankrupt estate of Peter Stump and that an order be entered herein, holding the same separate and apart from the bankrupt estate of Peter Stump and that the exemption be allowed therefor, and that the interests of your petitioner in said property shall be forever protected from the proceedings in the matter of the bankruptcy of Peter Stump.

Dated and signed this 19th day of April, A. D. 1922.

Veta Stump.

[fol. 35] [File endorsement omitted.]

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT  
OF IDAHO, CENTRAL DIVISION

In Bankruptcy.

No. 1539

[Title omitted]

ANSWER TO PETITION OF VETA STUMP FOR SETTING APART OF  
HOMESTEAD—Filed Apr. 28, 1922

Comes now S. D. White, trustee in the above-entitled matter, and by way of answer to the petition of Veta Stump, admits, denies and alleges as follows, to wit:

I

Admits that Veta Stump is now the wife of Peter Stump, the bankrupt.

II

Denies that prior to the first day of March, 1922, Veta Stump and Peter Stump, as his wife, were the owners in fee simple absolute of the real property described in paragraph two of the said petition but upon information and belief alleges that the same was and is the separate property of the said Peter Stump and was acquired by him prior to the marriage with the said Veta Stump.

III

Denies that on or about the 1st day of March, 1922, Veta Stump filed a declaration of homestead on the said premises, but alleges that such declaration of homestead was filed and recorded with the [fol. 36] County Recorder of Nez Perce County, Idaho, on the 28th day of March, 1922.

## IV

Admits that on or about the 6th day of February, A. D. 1922, the said Peter Stump upon his voluntary petition was duly adjudged a bankrupt and that his petition was filed in the said matter on the 2d day of February, 1922.

## Affirmative Defense

By way of affirmative defense this trustee alleges:

## I

That upon the filing of the petition in bankruptcy by the said Peter Stump, his estate passed into the custody and control of this Court and this trustee upon his appointment is deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings upon all property of the bankrupt which was not exempt at the date of the filing of the petition.

## II

That the land described in the petition of Veta Stump at the time of the filing of the petition in bankruptcy by the said Peter Stump and thereafter, has stood and still stands in the name of the said Peter Stump upon the records of Nez Perce County, Idaho, subject to a mortgage in the sum of \$3,500.00.

## III

That at the time of the filing of the said petition in bankruptcy, on February 2, 1922, and at all times prior to March 28th, 1922, there was no duly acknowledged declaration of homestead upon the said premises executed, filed and recorded as provided by law, either [fol. 37] by Peter Stump or Veta Stump, his wife, and the said property prior to the time of the filing of the said petition was subject to attachment and levy by creditors.

## IV

That the said bankrupt did not at the time of the filing of his schedules and has not since claimed the said property as exempt.

## V

That the filing of the declaration of homestead by the said Veta Stump is *annulity* as against this trustee and the unsecured creditors of Peter Stump whom he represents. That all of the said property is nonexempt and this trustee is entitled to the possession thereof for the use and benefit of creditors pending the administration of this estate, and the same should be sold to satisfy the claims of creditors in accordance with law.

## VI

That this trustee has refused to set aside the same as exempt property.

Wherefore, trustee respectfully prays as follows:

I. That the prayer of the petition of Veta Stump be denied.

II. That the trustee be let into the immediate possession and control of the hereinafter described property.

III. That the following described property be administered by this trustee for the benefit of creditors of this estate subject to only valid existing liens, to wit:

[fol. 38] "The Northeast Quarter of the Northeast Quarter (N. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ), the Northwest Quarter of the Northeast Quarter, (N. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) the Southwest Quarter of the Northeast Quarter (S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) and the Southeast Quarter of the Northeast Quarter (S. E.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) all in Section Thirty-one (31), Township Thirty-eight (38) North of Range One (1), West of the Boise Meridian."

IV. That Peter Stump and Veta Stump be restrained and enjoined from interfering with the use, possession and control of said premises by this trustee pending the administration of this estate.

Tannahill & Leeper, By S. O. Tannahill, Attorneys for Trustee. Residence and P. O. Address, Lewiston, Idaho.

STATE OF IDAHO,

County of Nez Perce, ss:

S. D. White, being first duly sworn, says, that he is the trustee in the above-entitled matter; that he has read the foregoing answer, well knows the contents thereof and verily believes the same to be true.

S. D. White.

Subscribed and sworn to before me this 28th day of April, 1922. S. O. Tannahill, Notary Public, Residing at Lewiston, Idaho. (N. P. Seal.)

[File endorsement omitted.]

[fol. 39] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy

[Title omitted]

ORDER OF REFEREE RE FILING PETITION FOR REVIEW—Filed Apr.  
28, 1922

The voluntary petition of Pete Stump of Southwick, Nez Perce County, Idaho, to be declared a bankrupt was filed with the Clerk of the above-entitled court, February 2d, 1922, and on said date was referred to Charles H. Chance, a Referee in Bankruptcy, residing at Lewiston, in Nez Perce County, in said District. On the 6th day of February, 1922, the petitioner was duly adjudged a bankrupt and the first meeting of the creditors was set for February 17th, 1922. By reason of the illness of the bankrupt on said February 17th, 1922, the first meeting of the creditors was adjourned to March 3d, 1922; by reason of the illness of the Referee on March 3d, 1922, the first meeting of the creditors was adjourned to Saturday, April 8th, 1922, at ten A. M. at the office of the Referee, Lewiston, Idaho, and notice of said adjourned meeting to said April 8th was given by mail to all known creditors.

The first meeting of the creditors was held at ten A. M. at the office of the referee at Lewiston, Idaho, on April 8th, 1922. At said meeting, James L. Harn, attorney at law, appeared for Veta Stump, wife of the bankrupt, and submitted to the referee a written claim of [fol. 40] homestead, dated March 1st, 1922, recorded March 28th, 1922, in Book 2, page 339, Records of Homesteads, Nez Perce County, State of Idaho, for the following described land:

The N. E.  $\frac{1}{4}$  of Sec. 31, Twp. 38 N., R. 1 W., B. M., in Nez Perce County, State of Idaho.

That a copy of the declaration of homestead so made and filed by the said Veta Stump was at said time filed with the Referee. In said claim of homestead, the claimant, Veta Stump sets forth that her family consists of herself, her husband, Peter Stump, and three minor children; that the said Peter Stump has made no homestead declaration and the said Veta Stump makes said declaration for the benefit of herself, her husband and said children; that in said declaration, declarant estimates the actual cash value of the property at Five Thousand Dollars (\$5,000.00), in which amount the declarant claims and values the homestead, said declaration of homestead was duly acknowledged March 1st, 1922, before C. A. Zieman, a Notary Public residing at Southwick, Idaho, and was filed as aforesaid March 28th, 1922, with the County Recorder of said Nez Perce County.

The question arising as to whether or not said claim of homestead should be allowed by the referee as a prior claim to the claims of the general creditors, the referee requested Mr. Harn, attorney for the



declarant, and Mr. R. D. Leeper, attorney for the Farmers Bank of Kendrick, Idaho, a creditor, to file briefs with the Referee in order to assist the Referee in reaching a determination as to whether or not [fol. 41] said claim of homestead should be allowed as requested by the homestead declarant.

The attorney for the declarant having on April 20th, 1922, filed a formal petition for the allowance of said claim and on said date having also filed a brief, and Mr. Leeper, attorney for said Farmers Bank, and also at the request of the Referee, acting as attorney for the trustee, S. D. White, and the referee having examined said petition and considered said briefs and being now advised in the premises finds, concludes and orders as follows:

1. That under the United States Statute commonly known as the Bankruptcy Act, only such claims can be made for homesteads and exemptions as such exemptions and homesteads are allowed under a state statute.

2. That it does not clearly appear from said petition for allowance of homestead whether or not the land claimed as homestead is community property of the said Peter Stump and Veta Stump, his wife, or whether it is or was the separate property of the bankrupt at the time of the filing of the petition in bankruptcy, February 2d, 1922.

3. That up to the time of the filing of the petition in bankruptcy, no homestead declaration had ever been filed on said property either by the bankrupt or his wife and no claim or declaration of homestead had ever been filed or made except said declaration and claim of March 1st, 1922, and filed with the Recorder of Nez Perce County, Idaho, March 28th, 1922, by the wife, the said Veta Stump.

[fol. 42] 4. That the legal effect of the filing of said petition in bankruptcy on February 2d, 1922, and the adjudication on February 6th, 1922, by the Referee, of the said Peter Stump as a bankrupt, was to place all the property of the said Peter Stump as of date, February 2d, 1922, in the custody of the law in like manner as though an attachment had been levied on the real property above described by a creditor or creditors for the total amount of the unsecured indebtedness of the said Peter Stump, and that by the filing of such petition and adjudication in bankruptcy, the said unsecured creditors in legal effect obtained a lien for the amount of their claims against the land above described.

5. That the lien of said unsecured creditors or the trustee in bankruptcy is superior in right and prior in time to the claim of homestead made by the wife of the bankrupt, Veta Stump.

6. If the real property above described was at the date of the filing of the petition in bankruptcy the separate property of the said Peter Stump, he had the right to sell and dispose of the same without the wife joining in such conveyance; if said real property was at said time community property, it was subject to attachment for the debts of the said Peter Stump as well as to attachment for the community



debts of the said Peter Stump and Veta Stump, his wife; and under Section 47a (2) of the Bankruptcy Act, the property of the bankrupt, after the adjudication, goes to the trustee as though vested with [fol. 43] all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings.

It is, therefore, ordered by the Court that said claim of homestead is disallowed as a priority over the claims of general creditors of the bankrupt, but is allowed as a homestead subject to said claims of the general creditors. This order does not affect nor is it intended to affect any lien created by the acts of the said Peter Stump and Veta Stump prior to the filing of said petition in bankruptcy, such as the mortgage of Fifty-five Hundred (\$5,500.00) given by them to the Federal Land Bank or like liens or like claims, should said mortgage and like claims hereafter be held to be valid liens superior in right and prior in time to the claims of general creditors.

Under Rule XVIII of the Bankruptcy Rules of the United States District Court for the District of Idaho, it is hereby ordered that if the said bankrupt or the said Veta Stump desire to file a petition for a review of the orders herein made, that such petition be filed within ten days from date hereof; or if further time is desired, that a request for such further time be made within said ten day period.

Dated at Lewiston, in the County of Nez Perce, State of Idaho, this 28th day of April, 1922.

Chas. H. Chance, Referee in Bankruptcy.

[File endorsement omitted.]

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[fol. 44] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF IDAHO, CENTRAL DIVISION

[Title omitted]

MOTION FOR ORDER EXTENDING TIME FOR APPEAL—Filed May 6,  
1922

Comes now James L. Harn and Clay McNamee, attorneys for the above-named bankrupt, and move the Honorable Charles H. Chance, Referee in Bankruptcy for said district, that the above-named bankrupt be granted ten days' additional time in which to prepare, serve and file herein necessary papers on appeal from that certain order herein made by said referee in bankruptcy on April 28th, 1922, denying to Veta Stump, the wife of said bankrupt, her claim to exempt from bankruptcy her homestead claim in and to the lands listed by said bankrupt in his petition and schedules herein filed.

Dated at Lewiston, Idaho, this 6th day of May, 1922.

James L. Harn, Clay McNamee, Attorneys for Bankrupt.  
Residence and postoffice address, Lewiston, Idaho.

[File endorsement omitted.]

[fol. 45] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF IDAHO, CENTRAL DIVISION

[Title omitted]

ORDER EXTENDING TIME FOR APPEAL—Filed May 6, 1922

Upon application of Messrs. James L. Harn and Clay McNamee, attorneys for the above-named bankrupt, and for good cause shown,

It is hereby ordered that in addition to the time allowed for review herein the above-named bankrupt be and is hereby granted ten days' additional time within which to file petition for review from that certain order made and entered herein on April 28th, 1922, in which said order the homestead claim of Veta Stump, wife of said bankrupt, was denied and in which said order the claim of said bankrupt for a homestead declaration filed by his said wife, Veta Stump, was denied.

Dated at Lewiston, Idaho, this 6th day of May, 1922.

Charles H. Chance, Referee in Bankruptcy.

[File endorsement omitted.]

[fol. 46] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF IDAHO, CENTRAL DIVISION

In Bankruptcy

#1539

[Title omitted]

PETITION OF VETA STUMP FOR REVIEW OF ORDER OF REFEREE—Filed  
May 16, 1922

Comes now the petitioner, Veta Stump, the wife of Pete Stump, and respectfully petitions the above-entitled Court for a review and modification of the order of the referee herein disallowing the homestead exemption of said petitioner, and as grounds and cause of said review states that the order of the referee filed herein on the 28th day of April, 1922, is, as petitioner is informed and believes, not in accordance with the law and the facts in the premises, and petitioner further represents:

I

That at all times herein mentioned this petitioner and Pete Stump were husband and wife and that on February 2d, 1922, said Pete Stump filed in this court a petition in bankruptcy and was on February 6th, 1922, duly adjudged a bankrupt.

## II

That under and by virtue of the Bankruptcy Act and the laws of the state of Idaho this petitioner appeared in said bankruptcy proceedings by filing her petition herein for her exemptions of \$5,000.00 in value, as will appear more fully by said petition which is on file in this case and which is hereby referred to and by reference made [fol. 47] a part hereof the same as if said petition was fully set out herein.

## III

That a homestead declaration was duly filed by petitioner on the 28th day of March, 1922, with the Auditor of Nez Perce County, Idaho, on community property of the parties hereto, which property was obtained from W. D. Lord and Margaret Lord on October 18th, 1920, by that certain deed recorded November 19th, 1920, in Book 129 of Deeds at page 138, Records of Nez Perce County, Idaho, which declaration of homestead is on file herein and by reference made a part hereof.

## IV

That the referee herein held a hearing on petitioner's claim for her exemption and on April 28th, 1922, made his findings and conclusions and entered an order disallowing said claim, which order is on file in this matter and is hereby referred to and by reference made a part hereof the same as if said order was fully and specifically set forth in this petition for review.

## V

That before filing her claim for her homestead exemption the petitioner and her husband sought advice from counsel and were advised by counsel that all was being done that was necessary to be done to protect her homestead rights. That petitioner and her husband are farmers and not familiar with law or procedure in regard to claiming homestead rights. That petitioner followed the advice of her counsel and if any error in regard to time or otherwise has [fol. 48] been made in the filing and claiming of said homestead that such error was made through the mistaken advice of said counsel.

## VI

That the findings and conclusions of the referee set forth in paragraphs 2, 4, and 5, and that part of paragraph 6 which reads as follows, "Under Section 47a (2) of the Bankruptcy Act the property of the bankrupt after the adjudication goes to the trustee as though vested with all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," are erroneous and were objected to at the time of the hearing and are now excepted to herein, as being contrary to both the facts and law in the premises.

## VII

That petitioner and Pete Stump were married July 7th, 1917, and ever since have been and now are husband and wife and have as the issue of their marriage three minor children, that the land and premises claimed as such homestead was paid for with community funds earned by the joint efforts of the petitioner and her said husband.

That the errors complained of and objected to are as follows:

## A

That the referee erred in not specifically finding in paragraph 2 of his findings that the homestead mentioned herein was the community property of the petitioner and her husband, Pete Stump.

## B

That said referee erred in his findings No. 4, and that instead of [fol. 49] said finding No. 4 the referee should have found that the claim of petition was a valid, subsisting and legal claim of homestead and that an order should have been made setting aside said exemption to petitioner.

## C

That the referee erred in finding No. 5, and that instead of finding No. 5 the referee's order should have provided that the petitioner's claim of homestead is superior in right to all unsecured claims of creditors in these bankruptcy proceedings.

## D

That the referee erred in that part of paragraph 6 of his findings which reads as follows: "Under Section 47a (2) of the Bankruptcy Act the property of the bankrupt after the adjudication goes to the trustee as though vested with all of the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," and that instead of that part of paragraph 6 the referee should have found and ordered that petitioner was entitled to her exemption and that said exemption should have been set aside to said petitioner without further proceedings.

Wherefore, petitioner prays that the above-entitled Court review said order of the referee in all respects wherein said referee disallowed said homestead exemption, and take any additional evidence deemed advisable by the Court, and that the schedule of the bankrupt proceedings herein be amended to include said claim of homestead exemption to this petitioner and that the referee be instructed [fol. 50] to set apart said homestead as exempt to said petitioner or

that the Court set same aside as provided by the Bankruptcy Act and by the laws of the State of Idaho.

For such other and further relief as to the Court may seem just and equitable in the premises.

Clay McNamee, James L. Harn, Harve H. Phipps, Attorneys  
for Petitioner.

UNITED STATES OF AMERICA,  
Central Division,  
District of Idaho, ss:

I, Veta Stump, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Veta Stump, Petitioner.

Subscribed and sworn to before me this 16th day of May,  
A. D. 1922. James L. Harn, Notary Public in and for the  
State of Idaho, Residing at Lewiston, Therein. [N. P.  
Seal.]

[File endorsement omitted.]

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[fol. 51] IN THE DISTRICT COURT FOR THE DISTRICT OF IDAHO,  
CENTRAL DIVISION

[Title Omitted]

MEMORANDUM DECISION OF REVIEW OF ORDER OF REFEREE DENYING  
EXEMPTION OF HOMESTEAD TO WIFE OF BANKRUPT—Filed June  
28, 1922

Tannahill & Leeper, Attorneys for Trustee.

Harve H. Phipps, James L. Harn, and McNamee & Clements,  
Attorneys for Petitioner.

DIETERICH, District Judge:

Persuasively and with much force it is argued for the trustee that inasmuch as no declaration of homestead on the property in question had been made at the time of the adjudication, it was subject to attachment, and that the order of adjudication was in effect an attachment for the benefit of all creditors, and that accordingly the declaration of homestead subsequently made was subordinate to such lien and the property was subject to administration in bankruptcy to the extent of the lien. But I am inclined to think that in principle, Brandt vs. Mayhew (9th C. C. A.), 218 Fed. 422, is controlling against this position. True the state laws are to be looked to for the measure of the bankrupt's substantive exemption rights,

[fol. 52] and in one respect the California statutes differ from those of Idaho. But having regard for the principle and reasoning of the Brandt-Mayhew case, the difference is not thought to be highly material. In both states precisely the same procedure is required before land occupied as a home, becomes exempt and in both states either the husband or the wife may make the requisite declaration. In both states property so occupied and formally claimed as a homestead is, as a general rule, exempt from execution or forced sale. In both states, however, there are exceptions to the rule, and sale may be had upon execution, to satisfy decrees foreclosing liens of mechanics, laborers, and vendors, or mortgages properly executed either before or after the declaration of homestead, and to satisfy judgments procured and recorded so as to constitute a lien prior to the declaration; and in Idaho there is the added provision that such property may be sold on execution to satisfy a judgment entered after the recording of the declaration, provided attachment in the suit was levied prior to the declaration. Technically, it is to be noted, this distinctive exception has no application here, for literally there was neither attachment, judgment, nor execution. For certain purposes, to be sure, an adjudication in bankruptcy may be regarded as in effect an attachment, and certain proceedings in the course of administration as the equivalent of a judgment and execution, but it may be seriously doubted whether so broad a meaning should be imported into a state statute defining exceptions to a general provision of exemption. In inserting the distinctive exception in the general provision (which was doubtless taken from the California code) it is to be assumed that the legislature had in mind the provisional remedy of attachment as defined in the Idaho Code, and considered that the lien of the judgment in such a case should be deemed to relate back to the lien of the attachment. It is wholly improbable that a constructive lien such as is effected by an adjudication in bankruptcy was contemplated. Moreover, only creditors of certain classes can avail themselves of the provisional remedy of attachment under the state statute, whereas, if the trustee's contention here should be sustained, the debtor's right to declare a homestead would be cut off in favor not only of creditors who had the right to attach, but also in favor of those who could not have attached under the state statutes, even if bankruptcy proceedings had not been instituted.

But however that may be, the rule of the Brandt-Mayhew case rests upon a more substantial basis,—considerations that have little, if any relation to the distinctive feature of the Idaho statutes. The fundamental question in that case was whether the status of property at the precise time of the adjudication in bankruptcy is to be taken as the criterion of the bankrupt's right to have it set apart as exempt, and the answer was in the negative. Much is to be said for the contrary view as maintained in the dissenting opinion, but of course we are to follow the majority decision, and, notwithstanding the [fol. 54] provisions of the bankruptcy act (Sec. 70a) vesting in the trustee in bankruptcy as of the date of the adjudication, the title to all property of the bankrupt except such as is exempt, and the

further provisions (47a (2,) amended,) vesting in the trustee (as to all property coming into the custody of the bankruptcy court) all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon, and also vesting in him (as to all property not in the custody of the court) the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied, it was there held that the bankrupt or his wife had the right, within a reasonable time after the adjudication, to file the declaration required by the state statute, and thereupon to claim the property as exempt from administration. In effect it is held that by the adjudication the trustee and the creditors acquire no permanent title or absolute lien upon property that the bankrupt may render or might have rendered exempt by complying with certain procedural conditions, provided that within a reasonable time after adjudication he complies with such requirements and makes appropriate and seasonable claim of exemption.

Applying the principle here, it must be held that the adjudication did not necessarily cut off the right of the bankrupt or his wife to file the requisite declaration of homestead and to claim the property as exempt.

Nor was the failure of the bankrupt to claim exemption in his [fol. 55] petition and schedules necessarily conclusive either against him or his wife. *Brandt vs. Mayhew*, supra.

The order complained of will therefore be set aside, with instruction to the referee to take further proceedings not out of harmony with the views herein expressed.

To avoid any possible misapprehension, it should be added that nothing herein should be construed as implying the view that in fact the bankrupt and his wife have not waived or lost their right by waiver, estoppel, neglect, or delay. What place should be given to these considerations is a question that must await a disclosure of all of the facts, if such issues are tendered and tried out in due course.

[File endorsement omitted.]

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT  
OF IDAHO, CENTRAL DIVISION

[Title Omitted]

ASSIGNMENT OF ERRORS OF LAW—Filed July 15, 1922

The petitioner, Samuel D. White, trustee of the estate of Pete Stump, Bankrupt, in connection with a petition to review and revise in matter of law the decision of this Honorable Court granting homestead exemption in favor of Veta Stump, makes the following assignment of error which he avers occurred in the decision of the said matter.



The Court erred in reversing the decision of the Honorable Charles H. Chance, referee in bankruptcy, and erred in his decision allowing a homestead exemption to Veta Stump, in the sum of \$5,000.00.

We hereby certify that the foregoing assignment of error is made on behalf of the petitioner for a writ of review and revision herein, and is in our opinion well taken, and the same now constitutes the assignments of error upon the writ prayed for.

Tannahill & Leeper, By Robert D. Leeper, Attorneys for  
Petitioner Samuel D. White, Trustee. Residence and P. O.  
Address, Lewiston, Idaho.

[File endorsement omitted.]

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT  
OF IDAHO, CENTRAL DIVISION

[Title Omitted]

APPLICATION FOR PREPARATION OF TRANSCRIPT—Filed July 15, 1922

To the Honorable F. S. Dietrich, judge of the court aforesaid:

The undersigned, Samuel D. White, trustee of the above-entitled estate, hereby respectfully shows to the Court that he desires to [fol. 57] make application to the Circuit Court of Appeals of the United States, for the Ninth Circuit, for a revision of that certain decision and order made and entered in the said matter, whereby an exemption in the sum of \$5,000.00 was allowed to Veta Stump out of the estate of the said bankrupt.

The applicant further shows that it is necessary to transmit with the petition for revision a certified transcript of the record in the said case.

Wherefore, your applicant respectfully prays that this Court direct the immediate preparation of a certified copy of the said decision and judgment and of the record in this case pertinent to the same, and that such certified copy be delivered to the attorney for the petitioner forthwith for the purpose of lodging the same in the Circuit Court of Appeals for the Ninth Circuit.

Dated this 10th day of July, 1922.

Samuel D. White, Petitioner. Tannahill & Leeper, By  
Robert D. Leeper, Attorney for Petitioner, Samuel D.  
White, Trustee. Residence and P. O. Address, Lewiston,  
Idaho.

[File endorsement omitted.]



[fols. 58-61] CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRAN-  
SCRIPT OF RECORD

UNITED STATES OF AMERICA,  
District of Idaho, ss:

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copies of petition and schedules, certification of question to be reviewed by the Judge, memorandum decision on review of order of referee denying exemption of homestead to wife of bankrupt, assignment of errors and application for preparation of transcript in the matter of Pete Stump, bankrupt, have been by me compared with the originals, and that it is a correct transcript therefrom and of the whole of such originals as the same appears of record and on the file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said court in said District this 20th day of July, 1922.

W. D. McReynolds, Clerk, By Pearl E. Zanger, Deputy.  
(Seal.)

[File endorsement omitted.]

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[fol. 62] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

No. 3904

[Title omitted]

[fol. 63] At a stated term, to wit, the October term, A. D. 1922 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable William B. Gilbert, senior circuit judge, presiding; the Honorable William H. Hunt, circuit judge; the Honorable Charles E. Wolverton, district judge.

No. 3904

In the Matter of the Estate of PETE STUMP, Bankrupt  
SAMUEL D. WHITE, as Trustee of the Estate of Pete Stump, Bankrupt, Petitioner,

vs.

VETA STUMP, Respondent.

## ORDER OF SUBMISSION

Pursuant to telegraphic request of counsel for the respective parties this day filed ordered above-entitled matter submitted to the Court for consideration and decision on briefs on file.

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[fol. 64] At a stated term, to wit, the October term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the city and county of San Francisco, in the State of California, on Monday, the thirtieth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable William B. Gilbert, senior circuit judge, presiding; the Honorable William H. Hunt, circuit judge; the Honorable Charles E. Wolverton, district judge.

[Title omitted]

## ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Honorable William B. Gilbert and William H. Hunt, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the cause was heard, ordered that the type-written opinion this day rendered by this Court in the above-entitled [fol. 65] cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court, in accordance with said opinion.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

[Title omitted]

Petition for Revision under Section 24b of the Bankruptcy Act, to  
Revise, in Matter of Law, a Certain Order of the United States  
District Court for the District of Idaho, Central Division.

Before Gilbert and Hunt, Circuit Judges, and Wolverton, District  
Judge

OPINION U. S. CIRCUIT COURT OF APPEALS—Filed Oct. 30, 1922

WOLVERTON, District Judge:

The record shows that Pete Stump filed his voluntary petition in bankruptcy February 2, 1922, and was adjudged a bankrupt February 6th. The usual schedules accompanied the petition. Among [fol. 66] the assets listed was a parcel of real property known as the northeast quarter of section 31, township 38 north, range 1 west. The bankrupt claimed certain personal property aggregating \$865 as exempt, but made no claim for homestead exemption. On March 1, 1922, Veta Stump, wife of the bankrupt, made and acknowledged her declaration selecting and claiming the above-described realty as a homestead for the joint benefit of herself, her husband, and three minor children. The declaration was filed and recorded in the county recorder's office on March 28, 1922. At the adjourned first meeting of creditors, April 8, 1922, Veta Stump, through her attorney, submitted to the referee in bankruptcy her claim in writing praying that the homestead be set apart to her out of the assets of the estate. The pleadings of the parties were later formulated, and the briefs of counsel having been submitted, the referee made and entered on April 28, 1922, an order disallowing the claim of homestead except subject to the claims of the general creditors.

From this order a review was prosecuted by Veta Stump to the District Court, resulting in its being set aside, with instructions to the referee to take further proceedings not out of harmony with the views of the Court then expressed.

The cause is here on petition of the trustee for revision of the order of the District Court thus rendered.

The question presented by this record is whether Veta Stump is [fol. 67] entitled to the homestead exemption selected and claimed by her for the joint benefit of herself, husband, and minor children.

Under the Idaho statutes the homestead includes: "The dwelling house in which the claimant resides, and the land on which the same is situated and located as in this act provided; also the proceeds thereof in the event of a voluntary sale, and also the insurance thereon, if any, in the event of a loss." Section 5437, Idaho Com-

piled Statutes, 1919. "The homestead is subject to execution or forced sale in satisfaction of judgments obtained.

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration.

2. On debts secured by mechanic, laborer or vendor's liens upon the premises.

3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant.

4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record." Section 5441.

"In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a declaration of homestead, and file the same for record." Section 5462.

[fol. 68] "The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit.

2. A statement that the person making it is residing on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their actual cash value." Section 5463.

"The declaration for homestead must be recorded in the office of the recorder of the county in which the land is situated." Section 5464.

It is no longer to be disputed that "the exclusive jurisdiction of the bankruptcy court is so far in rem that the estate is regarded as in custodia legis from the filing of the petition." *Acme Harvester Co. vs. Beekman Lumber Co.*, 222 U. S. 300, 307. Or that under section 47a, clause 2, the trustee acquires the status of a creditor having a lien as of the time when the petition in bankruptcy is filed. *Bailey vs. Baker Ice Machine Co.*, 239 U. S. 268, 275, 276.

Counsel for the trustee urges with much persuasion that the status thus acquired by the trustee is the equivalent of a judgment or attachment in the State court antedating the declaration of a homestead. [fol. 69] First, let it be premised that exemptions to which the

bankrupt is entitled are fixed and defined by the laws of the state in which he has his domicile, but the time and manner of claiming, selecting and allowance of exemptions are matters wholly within the jurisdiction and control of the bankruptcy courts. Further, under section 7a, clause 8, the voluntary bankrupt is required to prepare and file with his petition for bankruptcy a schedule of his assets and liabilities which shall contain "a claim for such exemptions as he may be entitled to." These claims may be amended if seasonably done. In *re Webb*, 219 Fed. 349, 350. Or if by oversight the claim for homestead is omitted from the schedule, it may be amended if timely application therefor is made to the Court. In *re Maxon*, 170 Fed. 356.

Now, as to the contention of counsel: This Court has in *Brandt vs. Mayhew*, 218 Fed. 422, declared that the purpose of the amendment to section 47a, which is now comprised by clause 2 of such section, was to make effective the rights of creditors against those who claimed secret or unrecorded liens or adverse interests in the property of the bankrupt; and that it did not effect the provisions of section 6 of the act, which guarantees to the bankrupt the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in bankruptcy. So in that case, which was one where on August 17, 1912, an involuntary petition in bankruptcy was filed against the husband, who was adjudged a bankrupt October [fol. 70] 8th; on November 4, 1912, the wife recorded a declaration of homestead; on November 20th she filed with the referee a petition for an order setting apart the homestead claimed; on January 10, 1913, the trustee filed an inventory of the assets of the estate, including therein the property claimed as a homestead, and on February 17th the bankrupt filed schedules and therein made claim to an exemption of \$5,000 in value of the real estate upon which his wife filed the declaration of homestead; it was held that the homestead was properly set apart to the claimants. This in view of the California statutes, which as they relate to the selection of homesteads, differ but little, but not materially, in so far as the principle involved is concerned, from the Idaho statutes. In both the homestead is subject to execution in satisfaction of judgments obtained before the declaration of homestead was filed for record. But in the Idaho statutes it is also subject to attachment leveled prior to its filing for record. The claim of homestead of the wife of Mayhew was initiated subsequent to the filing of the petition in bankruptcy against her husband; but it was determined, in effect, that the status of the trustee having a lien from the time of the filing of the petition in bankruptcy did not operate to deprive the wife of her homestead. The status of the trustee is regulated by the bankruptcy act. The liens by judgment or attachment derive their potency from the state statutes. But in neither the Mayhew nor in the present case were [fol. 71] there any such liens obtained prior to the filing of the petition in bankruptcy, or the initiation of the claim of homestead.

There is a distinction between the Mayhew case and the present. This is one of voluntary bankruptcy. The bankrupt filed his schedule along with his petition, and while he claimed certain per-

sonal property as exempt, he did not claim a homestead exemption; nor was any declaration of homestead made and filed until nearly two months thereafter. The husband not having made selection of a homestead, the wife, as the statute authorized her to do, exercised the right, and upon filing the same with the recorder, soon thereafter applied to the referee for an order setting the homestead apart for the benefit of herself, husband and minor children. The distinction, however, is not regarded as vital. By a certificate of the referee of May 16, 1922, it appears that the bankrupt himself submitted to the referee the claim of homestead selected by Veta, his wife, for allowance, and that a question arose as to whether an amendment to the petition in bankruptcy should be allowed, but there is no specific statement as to how it was disposed of.

It would seem but just and equitable to the wife under the conditions attending the record that the homestead should be set apart as prayed. Obviously, it is the intendment and purpose of the Idaho statute to provide the wife with the means of selecting the homestead in case the husband for any reason fails to make such selection. It was designed for her protection and support, [fol.72] and that of her family, and such statutes are liberally construed to the end that the purpose may be adequately effectuated. *Coughanour vs. Hoffman's Estate*, 2 Idaho, 267; *Smith vs. Thompson*, 213 Fed. 335. While it was the husband's primary authority and duty to claim the homestead if he so desired, and to make the claim at the time of filing his petition in bankruptcy, the fact remains that he did not do it; nor did he make any selection or attempt to do so. Thereupon the wife made the selection, and in seasonable time applied to the referee to have the homestead set apart to her from the assets of the estate. She could do nothing else for her protection; and not being a party to the bankruptcy proceedings, it was the only thing she could do to secure the homestead for the benefit of herself and family. In *Coughanour vs. Hoffman's Estate*, supra, where, the statute required that the selection be made by the husband and wife, or either of them, it was held that the widow was entitled to make the selection after the decease of the husband.

It is further insisted that as the creditors by the filing of the petition in bankruptcy are deprived of their right to proceed against the property of the bankrupt by levy of attachment or other mode of acquiring an involuntary lien for subjecting the property to execution and sale, the bankrupt and his privies are thereafter estopped to claim a homestead from the assets. This does not follow. As we have seen, the time and manner of claiming the exemption is regulated by the [fol. 73] bankruptcy act, and there can be no estoppel so long as the bankrupt is afforded a remedy in pursuance of such act. The cases of *In re Boyd*, 120 Fed. 999, and *In re Phillips*, 209 Fed. 490, are without application.

These considerations lead to an affirmance of the order and judgment of the court below, and it is so ordered.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

[Title omitted]

Petition for Revision, under Section 246 of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Idaho, Central Division.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS—Filed Oct. 30, 1922

[fol. 74] The above-entitled matter came on to be heard on the said petition for revision, and on the transcript of the record filed in support thereof, and was duly submitted to the Court for consideration and decision:

On consideration whereof, it is now here ordered and adjudged by this Court that the order and judgment of the said District Court in this matter be, and hereby is affirmed, with costs in favor of the respondent and against the petitioner.

It is further ordered and adjudged by this Court that the respondent recover against the petitioner for her costs herein expended, and have execution therefor.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

[Title omitted]

ORDER STAYING MANDATE—Filed Nov. 29, 1922

Upon telegraphic application of counsel for the petitioner, and [fol. 75] good cause therefor appearing, ordered mandate stayed for a period of thirty (30) days from and after December 1, 1922, on condition that petition for writ of certiorari be filed with the Clerk of the Supreme Court within the time extended, and in that event that the mandate of this court be stayed until after the Supreme Court of the United States passes upon said petition.

Dated: San Francisco, California, November 29, 1922.

W. H. Hunt, United States Circuit Judge.



[Telegram]

Received at 205 Market Street.  
Sutter 4321, Local 122.  
173SF. ZP 36 Blue.

Lewiston, Ida., 2.08 P. Nov. 29, 1922.

F. D. Monckton,  
Clerk Circuit Court of Appeals,  
San Francisco, Calif.:

Applying to supreme court for writ of certiorari in case White vs. Stump No. 3904 You are directed to prepare and forward transcript Necessary papers following Request mandate to lower court be stayed.

Tannahill and Leeper. 249P.

[File endorsement omitted.]

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[fol. 76] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

[Title omitted]

**CERTIFICATE OF CLERK**

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-five (75) pages, numbered from and including 1 to and including 75, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

[fol. 77] Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 5th day of December, A. D. 1922.

F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.  
[Seal of United States Circuit Court of Appeals, Ninth Circuit.]



[fol. 78] WRIT OF CERTIORARI AND RETURN—Filed April 9, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Samuel D. White, as Trustee of the Estate of Pete Stump, Bankrupt, is petitioner, and Veta Stump is respondent, No. 3904, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to revise an order of the District Court of the United States for the District of Idaho, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby [fol. 79] command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fol. 80] [File endorsement omitted.]

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[fol. 81] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 3904

[Title omitted]

STIPULATION ACCEPTING TRANSCRIPT IN SUPREME COURT AS A RETURN TO THE WRIT OF CERTIORARI AND FOR SUBMISSION UPON WRITTEN BRIEFS AND ARGUMENTS ON FILE IN SUPREME COURT AND WAIVER OF HEARING

The petition for a writ of certiorari having been granted herein, Come now the respective parties, by their attorneys, and within ninety days from and after the initiation of this cause in the Supreme Court in the October, 1922, term thereof, and stipulate that this cause shall be submitted to the Honorable Supreme Court upon the printed briefs and arguments already on file therein, hereby giving oral argument, hearing and notice of hearing, and consent-

ing that the cause shall be decided by this Honorable Court forthwith, and as soon as it may properly come before it, and consenting that the transcript of record already on file in the U. S. Supreme Court on the Petition for Certiorari (Case No. 777 therein) shall be taken as a full, complete and sufficient return to the Writ of Certiorari issued March 12, 1923, from said Supreme Court to the Honorable Judges of said United States Circuit Court of Appeals.

Samuel O. Tannahill, Ro'ert D. Leeper, Empire National Bank Building, Lewiston, Idaho; James E. Babb, Lewiston National Bank Bldg., Lewiston, Idaho, Attorneys for Petitioner. Harve H. Phipps, Sherwood Building, Spokane, Wash., Attorney for Respondent. James E. Babb, Of Counsel for Petitioner.

[File endorsement omitted.]

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[fol. 82] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

No. 3904

[Title omitted]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS TO STIPULATION AS TO RETURN TO WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES

I, Frank D. Monekton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation Accepting Transcript in Supreme Court as a Return to the Writ of Certiorari and for Submission upon Written Briefs and Arguments on File in Supreme Court and Waiver of Hearing," filed in the above entitled cause on the 27th day of March, A. D. 1923, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1923.

F. D. Monekton, Clerk, By Paul P. O'Brien, Deputy Clerk.  
[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

[fol. 83] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT

[Title omitted]

RETURN TO WRIT OF CERTIORARI

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation Accepting Transcript in Supreme Court as a Return to the Writ of Certiorari and for Submission upon Written Briefs and Arguments on file in Supreme Court and Waiver of Hearing," in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the petitioner in said cause in the said Supreme Court as a part of its petition for a Writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 27th day of March, A. D. 1923.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1923.

F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

[File endorsement omitted.]

[fol. 84] [File endorsement omitted.]